

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

HAZEL ROGERS)	
Claimant)	
VS.)	
)	Docket No. 225,922
EVCON INDUSTRIES)	
Respondent)	
AND)	
)	
INSURANCE COMPANY)	
STATE OF PENNSYLVANIA)	
Insurance Carrier)	

ORDER

Claimant appealed the January 18, 2002 Award entered by Administrative Law Judge Jon L. Frobish. The Board heard oral argument on July 12, 2002, in Wichita, Kansas.

APPEARANCES

W. Walter Craig of Wichita, Kansas, appeared for claimant. Matthew Schaefer of Wichita, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. The record also includes the medical records that the parties stipulated into evidence by written stipulations filed with the Division of Workers Compensation on November 6, 2001, and November 27, 2001.

ISSUES

This is a claim for permanent partial general disability benefits based upon claimant's whole body functional impairment rating for bilateral arm injuries. The parties stipulated the appropriate accident date for this repetitive use injury claim should be

September 8, 1997, which was the approximate date that claimant last worked for respondent. In the January 18, 2002 Award, Judge Frobish awarded claimant medical benefits but denied the request for permanent partial general disability benefits.

Claimant contends Judge Frobish erred. Claimant argues she permanently injured both upper extremities while working for respondent and, therefore, is entitled to receive a 16 percent permanent partial general disability based upon the functional impairment rating provided by her medical expert witness, Dr. Richard S. Piazza.

Conversely, respondent and its insurance carrier argue claimant sustained only a temporary injury to the right upper extremity while working for respondent and that the left arm was injured working for a subsequent employer. Accordingly, they contend the Award should be affirmed.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

The denial of the request for permanent partial disability benefits should be affirmed. The Board concludes that claimant has failed to prove that she sustained either permanent injury or permanent impairment as a result of the work that she performed for respondent.

Claimant requests permanent partial general disability benefits for overuse injuries to both hands and arms. Claimant began working for respondent in either late March or early April 1997. She contends the work activities that she performed for respondent through her last day of work for respondent on or about September 8, 1997, permanently injured both hands and arms.

After claimant left respondent's employment in September 1997, she began working for another employer approximately one week later. According to the expert medical testimony, the first mention of left arm symptoms in the medical records does not appear until May 1998. Dr. John F. McMaster, who treated claimant's right upper extremity symptoms beginning in May 1997 and saw claimant approximately eight times through September 2, 1997, testified that claimant did not complain of left arm symptoms during those visits. The doctor also testified that he did not believe claimant had any impairment in the right upper extremity as of September 2, 1997, which was only six days before claimant left respondent's employment.

The parties stipulated into evidence the August 15, 1997 office notes from Dr. Jay Stanley Jones, whom claimant consulted for another opinion. Those office notes document that claimant was complaining of right hand and arm symptoms but do not mention the left upper extremity. The notes read, in part:

She comes in today complaining of an injury at work to the right elbow, wrist and fingers. She has shooting pain going up her arm and numbness to the tip of her third finger. When the patient works she has pain and swelling. She works in set up. She asked to see the company doctor. She was put on hold. When she saw him she was sent to physical therapy which made her worse. She has been seen by Dr. McMasters [sic]. She is right handed. On exam she has pain over the extensor insertion. She has been wearing an arm brace. She does have a positive Tinel's and a positive Phalen's.

Finally, the Board notes that the application for hearing that was filed on August 22, 1997, with the Division of Workers Compensation states that claimant was alleging injuries to the right arm and hand and left shoulder. The application, which was signed by claimant, does not indicate that claimant was alleging any injuries to the left hand or wrist.

The Board notes that claimant has presented an expert medical opinion from Dr. Richard S. Piazza that claimant sustained permanent injury to both upper extremities while working for respondent. Likewise, the Board notes that Dr. Philip R. Mills, whom the Judge requested to perform an independent medical evaluation, determined that claimant sustained a one percent functional impairment to the right upper extremity because of lateral epicondylitis in the right elbow that she developed while working for respondent, but he could not relate claimant's left upper extremity complaints to that employment.

In light of the contemporaneous medical records and the opinions of Dr. McMaster, the Board is not persuaded that claimant sustained either permanent injury or permanent impairment as a result of the work that she performed for respondent.

AWARD

WHEREFORE, the Board affirms the January 18, 2002 Award entered by Judge Frobish.

IT IS SO ORDERED.

Dated this ____ day of July 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: W. Walter Craig, Attorney for Claimant
Matthew Schaefer, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Workers Compensation Director